IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No. 294 of 2000.

Judgment reserved on: 16.8.2007

Date of decision: 17.8.2007.

State of H.P. **…….Appellant**

Vs.

Satish Kumar **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting? ***No***

For the Appellant : **Mr. M.A. Khan, Deputy Advocate General.**

For the Respondent : **Mr. R.K. Bawa, Senior Advocate with Mr. Inderjit Narwal, Advocate.**

Kuldip Singh, Judge.

The State is in appeal against the judgment of acquittal dated 17.12.1999 passed by learned Chief Judicial Magistrate, Solan in Criminal Case No.104/2 of 1993.

The brief facts of the case are that on 1.12.1992 at about 12 noon complainant Jamshed Ali was in the shop of his uncle and Satish Kumar accused had been working in the adjacent jewellery shop. The accused turned up at the shop of Jamshed Ali and tried to pickup a bucket in which material was lying for jewellery plating. Suresh Kumar PW-2 was sitting in the shop. The complainant protested against the act of accused to pickup bucket from the shop, on this accused got infuriated

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Whether the reporters of the local papers may be allowed to see the Judgment?

and thereafter turned up with a bottle of acid. The accused tried to throw acid on the person of the complainant . PW-2 Suresh Kumar tried to prevent the accused from throwing the acid but some acid fell on Suresh Kumar also and in this process complainant as well as Suresh Kumar sustained burn injuries on their person. The matter was reported to the police and an FIR Ex.PA was registered, Ex.P-1 Jarsi and Ex.P-2 track suite of the complainant which he was wearing were taken into possession vide memo Ex.PW-2/A. Jamshed Ali and Suresh Kumar were medically examined and their MLCs are Ex.PW-4/A and Ex.PW-4/B. The trouser of Suresh Kumar which he was wearing at the relevant time was also taken into possession by the police. Acid bottle was also taken into possession. The report of the Forensic Science Laboratory was obtained which is Ex.PX. The accused was tried in the Court of learned Chief Judicial Magistrate for having committed an offence under Section 324 IPC. He was acquitted vide impugned judgment.

I have heard the learned counsel for the parties and gone through the record.

The learned Deputy Advocate General has submitted that the trial Court has erred in acquitting the accused. The trial Court has misconstrued and misinterpreted the material on record. The prosecution has proved the case beyond reasonable doubt. The learned Senior counsel for the respondent has supported the impugned judgment.

The complainant Jamshed Ali and Investigating Officer H.C. Shyam Lal the two material witnesses were not examined by the prosecution. The case against the accused is to be appreciated in the light of statement of PW-2 Suresh Kumar and other material on record. The MLCs of complainant and pW-2 Suresh Kumar are Ex.PW-4/A and

Ex.PW-4/B. Dr. G.D. Khullar who examined the injured persons has appeared as PW-4 and he has not ruled out the possibility of a person suffering injuries described by him, if said person falls on the floor which is wet with acid.

PW-1 Shashi Malhotra has stated that he does not know anything about the case. He was declared hostile. In cross-examination he has denied that he made a statement before the police. He has denied that Satish and Jamshed Ali were quarreling and he has also denied that he has heard about throwing of acid.

PW-2 Suresh Kumar has stated that he had given jewellery to the uncle of Satish for washing and he had come to collect that jewellery on 1.12.1992. Jamshed Ali and Satish Kumar had some quarrel, he tried to intervene but Satish brought acid bottle. He tried to stop him but he threw acid bottle on Jamshed Ali. He also threw some acid on him, as a result of which, he got burnt injuries on his leg and his pant was also burnt. He denied that sweater Ex.P-1 and pant Ex.P-2 are owned by him. A memo was prepared regarding his pant which was handed over by him to the police. He identified his signature on memo Ex.PW-2/A. In cross-examination he has stated that the police did not take into possession the bottle of acid. He has further stated that there were only three persons in the shop, remaining persons came thereafter. He has denied that at the time of quarrel the bucket fell down.

PW-3 Kamal Chand has proved rapat Ex.PW-3/A and PW-5 Mahinder Partap has proved FIR Ex.PA on the basis of rapat Ex.PW-3/A. The report Ex.PX of Forensic Science Laboratory was tendered in evidence. In his statement under Section 313 Cr.P.C. accused denied the allegations.

PW-2 Suresh Kumar has stated that his pant was also burnt due to acid but that pant was not produced by the prosecution during the trial. It has not been proved that Jamshed Ali complainant was wearing Ex.P-1 sweater and Ex.P-2 pant at the time of alleged occurrence. PW-2 has stated that the police did not take into possession bottle of acid. Complainant Jamshed Ali most material witness was not examined by the prosecution. The testimony of PW-2 Suresh Kumar has not been corroborated by independent witness. The learned Chief Judicial Magistrate has taken a possible view on the basis of material on record. This Court in appeal will not interfere simply on the ground that other view is also possible. The prosecution has miserably failed to prove the case against the accused. No interference is called for. The appeal is dismissed.

(Kuldip Singh)
Judge

August 17 , 2007
(sks)